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**Supreme Court of the United States**

OCTOBER TERM 1941.

No. 

**117**

S. J. SUMMERS, C. E. GAMBLE,  
MRS. A. C. ASTON, ET AL.,  
PETITIONERS,

*vs.*

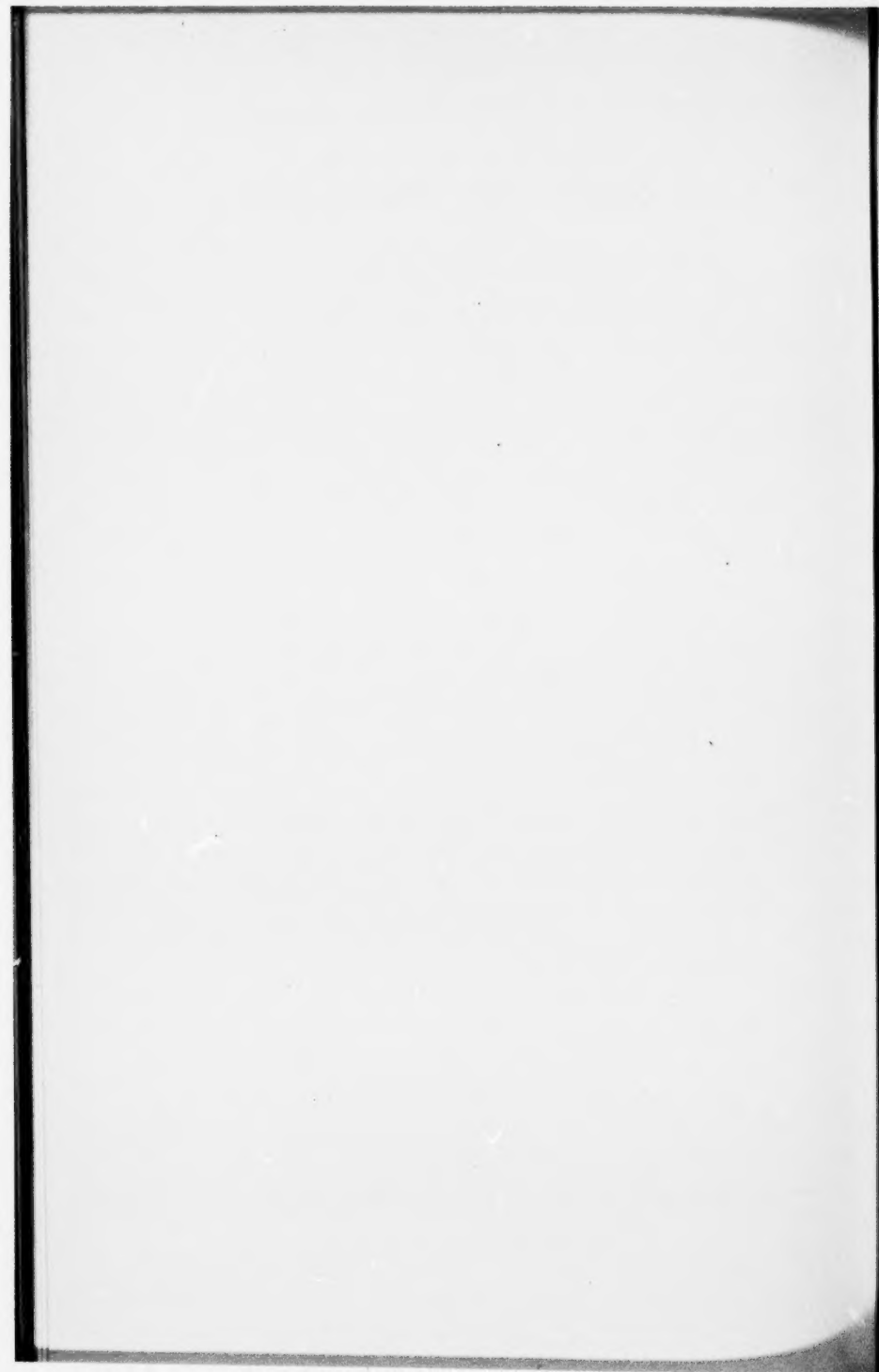
CLARE PURCELL, WILLIAM T. WATKINS,  
J. LOYD DECELL, ET AL.,  
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE FOURTH CIRCUIT,

*and*

BRIEF IN SUPPORT THEREOF.

COLLINS DENNY, JR.,  
C. T. GRAYDON,  
*Counsel for Petitioners.*



## SUBJECT INDEX

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	PAGE
<b>PETITION FOR WRIT OF CERTIORARI.....</b>	1
A. REFERENCES REQUIRED BY RULES 12 AND 38 .....	1
B. QUESTION PRESENTED .....	2
C. SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.....	2
D. REASONS RELIED ON FOR THE ALLOW- ANCE OF THE WRIT.....	9
<b>BRIEF IN SUPPORT THEREOF.....</b>	13
I. THE OPINION OF THE COURT BELOW..	13
II. JURISDICTION .....	13
III. STATEMENT OF THE CASE.....	14
IV. SPECIFICATION OF ERRORS.....	14
V. ARGUMENT .....	14
1. <i>Summary of the Argument</i> .....	14
2. <i>Point A.</i> The established principles which determine whether or not a case presents the required jurisdictional amount in con- troversy .....	15
3. <i>Point B.</i> The value of the local congrega- tional properties in South Carolina, in connection with which suits are now pend- ing in South Carolina State Courts, can- not be considered in determining whether the required amount is in controversy...	17
4. <i>Point C.</i> The Methodist Church, a voluntary association, is incapable of owning prop- erty. The value of so called "Church Properties" cannot furnish the required	

## SUBJECT INDEX—CONTINUED

	PAGE
jurisdictional amount in controversy. In order to maintain a suit involving "Church Properties" there must be alleged some judicially cognizable interest in the property, and the property involved must be pointed out with reasonable certainty. Here neither of these is done.....	17
5. <i>Point D.</i> The allegations that the use by petitioners of the name "Methodist Episcopal Church, South" casts a cloud on the title to millions of dollars of undesignated property cannot support jurisdiction....	20
6. <i>Point E.</i> A religious society has no "good will" in the legal sense of that term, cannot be subjected to unfair competition, and the allegations of confusion amid persons who may desire to join a Church and of confusion amid peoples who may desire to make a donation, cannot support jurisdiction .....	21
7. <i>Point F.</i> The allegations that the use of the name "Methodist Episcopal Church, South", has a value in excess of \$3,000.00, and that its use by petitioners will cause damage to the respondent Bishops in excess of \$25,000.00, cannot sustain jurisdiction .....	22
8. <i>Point G.</i> This proceeding, in the final analysis, raises a pure ecclesiastical question, over which no court, State or Federal, can take jurisdiction. Jurisdiction exists only if a solution of the ecclesiastical question is necessary to determine some property right, alleged in the Complaint.....	24
VI. CONCLUSION .....	26

## TABLE OF CASES

	<i>Page</i>
<i>Barry v. Mercein et al.</i> , 5 How. 103, 12 L. Ed. 70.....	16
<i>Bitterman v. L. &amp; N. R. Co.</i> , 207 U.S., 205, 52 L. Ed. 171, 28 Sup. Ct. 91, 12 Ann. Cas. 693.....	16
<i>Borden's Estate, In re</i> , 159 N.Y. Supp. 346.....	22
<i>Crescent Planing Mill Co. v. Mueller</i> (Mo. 1938), 117 S.W. 2d 247.....	22
<i>Farmers &amp; Merchants Bank etc. et al. v. Federal Re- serve Bank of Richmond, Virginia</i> , 274 Fed. 235, 16, 22	22
<i>Fussell v. Hail</i> , 233 Ill. 73, 84 N.E. 42.....	20, 24
<i>Glenwood Light &amp; Water Co. v. Mutual etc. Co.</i> , 239 U.S. 121, 60 L. Ed. 174, 36 Sup. Ct. 30.....	16
<i>Helm v. Zarecor</i> , 222 U.S. 32, 56 L. Ed. 77.....	19
<i>Horn v. Mitchell</i> , 243 U.S. 247, 61 L. Ed. 700, 37 Sup. Ct. 293 .....	16
<i>Hunt v. N.Y. Cotton Exchange</i> , 205 U.S. 322, 51 L. Ed. 821, 27 Sup. Ct. 529.....	16
<i>Kline v. Burke Construction Co.</i> , 260 U.S. 226, 67 L. Ed. 226, 43 Sup. Ct. 79, 24 A.L.R. 1077.....	17
<i>Metropolitan Bank v. St. Louis Dispatch Co.</i> , 149 U. S. 436, 37 L. Ed. 799, 13 Sup. Ct. 944.....	22
<i>National Lock Co. v. Chicago Regional Labor Board</i> , 8 Fed. Supp. 820.....	16
<i>Perrine v. Slack</i> , 164 U.S. 452, 41 L. Ed. 510, 17 Sup. Ct. 79 .....	16
<i>Philadelphia Trust, Safe Deposit and Insurance Co. v. Philadelphia Trust Co.</i> , 123 Fed. 534.....	23
<i>Pine Grove Church Case</i> —(See <i>Turbeville v. Morris</i> )	
<i>Smith v. Swormstedt</i> , 16 How. 88, 14 L. Ed. 942.....	19
<i>Turbeville, et al. v. Morris, et al.</i> .....	5, 6

# TABLE OF CASES—CONTINUED

	<i>Page</i>
<i>Watson v. Jones</i> , 13 Wall. 679, 20 L. Ed. 666.....	24
<i>Winchester Repeating Arms Co. v. Butler Bros.</i> , 128 Fed. 976 .....	21, 22

## TABLE OF TEXTS AND STATUTES

24 Am. Jur. 807.....	22
51 C. J. 217.....	21
51 C. J. 227.....	21
54 C. J. 47.....	17
7 C. J. S. 38.....	17
7 C. J. S. 82.....	17
Dobie, Federal Procedure, p. 133.....	16
Judicial Code, Sec. 240(a), U.S.C. Title 28, Sec. 347(a)	2, 13
26 R. C. L. 875.....	22
Zollman, American Church Law, p. 503.....	17

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TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE  
JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners, S. J. Summers, C. E. Gamble, Mrs. A. C. Aston, Rev. C. P. Chewning, J. M. Huggins, L. A. Manning, Jr., G. G. Pike, Mrs. S. J. Summers and Miss Mildred Huggins, respectfully show unto your Honors the following:

A.

REFERENCES REQUIRED BY RULES 12 AND 38.

The opinion of the Court below (R. 74) rendered on March 9, 1942, is to be found in 126 F. 2d 390. Its decree

(R. 81) was entered on the same date. The Jurisdictional Authority of this Court to review the decree is Judicial Code, Sec. 240 (a), as amended; U.S.C. Title 28, Sec. 347 (a).

B.

### QUESTION PRESENTED.

The sole question presented is: Did the District Court of the United States for the Eastern District of South Carolina have jurisdiction to consider the complaint filed by respondents?

C.

### SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

The origin of this case lies in the alleged union of the "Methodist Episcopal Church", the "Methodist Episcopal Church, South" and the "Methodist Protestant Church" into a new ecclesiastical society, "The Methodist Church".

Respondents, non-residents of South Carolina, are eight Bishops of The Methodist Church, and formerly were Bishops of the Methodist Episcopal Church, South. They sue as "Members of the Methodist Church \* \* \* on Behalf of Themselves and All of the Members of Said Church and Officially as Bishops of Said Church Representing Themselves and All Other Members of Said Church as a Class" (R. 71).

Petitioners, residents of South Carolina, are members of the "Layman's Organization for the Preservation of the Southern Methodist Church", which called a meeting of the members of the Methodist Episcopal Church, South, at which a provisional plan of organization for the purpose of continuing the Methodist Episcopal Church, South, was adopted, whereby there was created a voluntary association under the name "South Carolina Conference of the Meth-



odist Episcopal Church, South". Petitioners are officers of this Conference (R. 5). They are sued "Individually and as Officers and Members of an Unincorporated Society, Holding Itself Out to Be the 'South Carolina Conference of the Methodist Episcopal Church, South', and as Representing All Other Persons Similarly Situated, All Residing in the State of South Carolina" (R. 71).

The District Court, on motion, dismissed the Complaint for lack of jurisdiction (R. 24, et seq). On appeal, the District Court was reversed and the cause remanded (R. 81).

The material allegations of the Complaint and Amended Complaint, in addition to those set forth above, are, in brief:

That the membership of The Methodist Church constitutes a class and that respondents file the Complaint on their own behalf and as representatives of the class (R. 4).

That the aim of the "South Carolina Conference of the Methodist Episcopal Church, South", and of the said "Laymen's Organization" is the perpetuation of the Methodist Episcopal Church, South, under that name, without authority of The Methodist Church (R. 5, 6).

That by appropriate action each of the three constituent Churches adopted a Plan of Union, and authorized the consummation thereof at a Uniting Conference, at which Uniting Conference the union was consummated, and "The Methodist Church" was brought into existence.

That The Methodist Church has immense property interests (R. 46). That, at the time of the Union, the Methodist Episcopal Church, South, had large property interests, held for its use and benefit by trustees, boards, etc. (R. 52); that, as a general rule, local congregational properties i. e. houses of worship of the Methodist Episcopal Church, South, were held by individual trustees as a place of worship for the use of the ministry and membership of said Church, subject to its Discipline, usage and ministerial appointment, and that the other properties and funds were

held by corporations, commissions and other agencies under charters or other instruments using the name "Methodist Episcopal Church, South", and are now held by The Methodist Church under such charters and instruments, as successor to the Methodist Episcopal Church, South (R. 52).

That, in anticipation of the Union and subsequent thereto, certain members of the Methodist Episcopal Church, South, claiming that the Union was illegal, null and void, refused to adhere to The Methodist Church, and claimed that those thus refusing constituted the Methodist Episcopal Church, South, which they contend still exists (R. 53); that for the purpose of bringing local congregational properties under the control of the Conference above mentioned (R. 54), certain deeds were executed in South Carolina alienating properties from the lawful owners and attempting to vest title thereto in Trustees for the use and benefit of the membership of the respective local congregations, free and independent of The Methodist Church, and that the grantees in said deeds have attempted to prevent the duly appointed ministers of The Methodist Church from performing their duties as pastors therein; that in order to cancel said deeds and secure injunctions, suits have been brought in the Courts of South Carolina, and that the value of the property so attempted to be alienated greatly exceeds \$3,000.00; that such deeds have been executed and such suits brought in connection with former churches of the Methodist Episcopal Church, South, in South Carolina at Florence, Clinton, Springfield, Turbeville, Timmons ville, Leo, Ridgefield and Fork and that the value of these properties exceeds \$50,000.00 (R. 57).

That the three constituent churches, in forming the Methodist Church, did not abandon the name, "Methodist Episcopal Church, South," but that The Methodist Church is entitled to the exclusive use of that name; that its use "by a rival organization would cast a cloud upon the title to every piece of property held in the name of, or by trustees, for the use of the Methodist Episcopal Church, South, at the

time of said Union" (R. 54), would seriously injure The Methodist Church "by the consequent impairment of its good will" (R. 54), would confuse ignorant persons and promote dissension (R. 55), would constitute "unfair competition", and tend to create doubt and confusion in the minds of those desiring to make donations (R. 56).

Respondents pray for a declaratory judgment in two respects: First, that the Union of the three churches was legal and valid; and Second, that The Methodist Church is the legal successor to all the property and rights formerly held by the Methodist Episcopal Church, South, including the exclusive right to the use of its name. They also seek an injunction enjoining petitioners and those acting with them from using the names "Methodist Episcopal Church, South" and "Southern Methodist Church" or any similar name, as the name of any Church or religious society organized or existing independent of The Methodist Church (R. 7).

There is no allegation that any one of the eight Bishops who filed the Complaint, or all the Bishops, has or have any cognizable right of property, legal or equitable, in any property located in South Carolina or elsewhere; nor that any one of them is a trustee of any trust, a director or officer of any corporation, or a member of any commission or agency that owns property; nor that any one of them is a beneficiary of any trust or that any property is held in any respect for the use or benefit of any one of the eight Bishops or of all the Bishops.

Save for the reference to the eight congregational properties in South Carolina concerning which deeds of alienation have been given and concerning which proceedings were begun in State Courts prior to the institution of this proceeding, the Complaint points out no property in South Carolina or elsewhere—it simply alleges that property of great value, located at undetermined points, is owned by unnamed corporations, trustees, etc.

The Bill of Complaint in the case of *Turberville, et al. v.*

*Morris, et al.*, pending in the Court of Common Pleas for Clarendon County, South Carolina, and involving the Pine Grove Church at Turbeville, South Carolina, which case has now been adjudicated by said Court of Common Pleas, and is being appealed to the Supreme Court of South Carolina, was filed as typical of the Complaints filed in the eight separate suits pending before the State Courts of South Carolina (R. 8 et seq.).

These State cases are broad class actions, brought by ministerial and lay members of The Methodist Church against members of the Methodist Episcopal Church, South, who have declined to affiliate with The Methodist Church, and who seek to preserve and perpetuate the Methodist Episcopal Church, South, and who have joined with others in said "Layman's Organization". In each there is alleged a deed alienating certain real estate therein fully described; the validity of the Union is alleged and it is asserted that The Methodist Church is the successor of the three constituent churches and holds and enjoys the properties of the three constituent churches and has legal title to the name "Methodist Episcopal Church, South". In each, there is sought a declaration that The Methodist Church is entitled to the use and possession of the particular real estate alleged in the Complaint; there is a prayer for the cancellation of the alienation deed; there is a prayer for an adjudication that The Methodist Church owns the name "Methodist Episcopal Church, South" and that the defendants and all persons in like situation be enjoined from using that name, or a name of like import.

Save, therefore, as the instant proceeding is instituted by certain Bishops of The Methodist Church, on behalf of all members of that Church, against officials of the "South Carolina Conference of the Methodist Episcopal Church, South" as representing all others in South Carolina similarly situated, whereas the State cases are brought by certain ministers and by certain members of a local congregation on behalf of the whole membership of The Methodist

Church, against certain lay members of that congregation and all others who seek to perpetuate the Methodist Episcopal Church, South; and save as each of the State cases specifically alleges the particular piece of property involved, whereas the instant case, taken in its most favorable light to the Bishops, alleges, in such fashion as a court can consider, only the eight pieces of property involved in the several State cases, these proceedings are identical.

The jurisdictional points raised by petitioners are briefly (R. 21, 26, 75):

1. That the Complaint raises no rights of property, save perhaps the eight houses of worship in South Carolina, each of which is the specific subject of an action pending in a state court. That, as the *res* of each of these eight properties is the subject of an *in rem* action in a state court of competent jurisdiction, the Federal Court cannot consider, or make adjudication, concerning any one of those eight properties, and the value thereof cannot be considered in determining whether there is in controversy the required jurisdictional amount.

2. That the Complaint does not raise questions which involve the jurisdictional sum of an amount in excess of \$3000.00.

3. That the Complaint, accordingly, presents simply an ecclesiastical question; and no court has jurisdiction to pass upon such a question, save as its settlement may be essential to the adjudication of a property right.

The Circuit Court of Appeals was of opinion that the State court had exclusive jurisdiction over the eight properties involved in the State cases, but that the pendency of those suits went no further than to preclude the District Court from dealing with those eight properties. It found that when those suits were instituted, there was no state or sectional organization of persons seeking to perpetuate the Methodist Episcopal Church, South, but that there was merely an attempt on the part of some persons in local congregations to withhold local property from the control of

the United Church (R. 79). In this factual finding it erred, for the Complaint in the instant case shows that the "South Carolina Conference of the Methodist Episcopal Church, South", grew out of and had the same purpose as the "Layman's Organization for the Preservation of the Southern Methodist Church", and the Complaint in the Pine Grove Case expressly alleges that the defendants in that case are members of the "Layman's Organization" just as it is alleged in the instant case that petitioners are also members of the "Layman's Organization".

The Circuit Court of Appeals found that the allegation of vast properties owned by undesignated trusts, corporations and agencies for the benefit of undesignated persons, was sufficient to bring those properties, apparently without reference to the charters and trust instruments, before the Court for adjudication, and that the value thereof furnished the amount in controversy. Further, the Circuit Court of Appeals says of the allegations that the value of the use of the name "Methodist Episcopal Church, South" exceeds the jurisdictional amount and that the damage to The Methodist Church of the use of that name by another Church would exceed that amount, are not denied in the Answer. These allegations are made in the amended Complaint (P. 7, 8—see Manuscript Record, p. 43-44), which was filed on the eve of argument. To that amended Complaint, no specific answer was filed, but paragraph No. 2 of the Answer contained a specific denial of every allegation of the Complaint not specifically admitted or modified and admitted as modified. Having made this general denial and having answered in detail a Complaint 24 pages in length, it was not deemed necessary to answer additional allegation in an amended Complaint which added little to the original.

## D.

REASONS RELIED ON FOR THE ALLOWANCE  
OF THE WRIT.

1. While it is sought by this petition to bring up for review an interlocutory order, that order decides a question of Federal law which should be decided by this Court. It is believed that the question presented is so fundamental and is also so important to such a large number of the people that the filing and granting of this petition is warranted.

2. The several state courts of South Carolina have acquired jurisdiction over the specific properties which are the *res* of those suits, and as a Federal Court cannot interfere with that jurisdiction, the value of those properties cannot be considered in determining the amount in controversy.

3. The Methodist Church is a voluntary association. It owns no property, is not capable of owning property, and the persons who sue as members of that Church and who found their complaint on alleged property interests of the Church proceed on a fallacy. What are loosely and generally referred to as "Church Properties" are owned by corporations and trusts. In order that a person or group of persons may institute suit concerning those properties, there must be allegations showing some legally or equitably enforceable interest of those persons in the properties. The Bishops in this case allege no such interest. They are not typical of the membership of the Church. That membership is of three classes and they are but one class (R. 61-62). The Bishops not only allege no interest in the property, but, as a matter of fact, they individually and as a class have no interest, legal or equitable, in any funds, save a fund held in the State of Tennessee and administered by Trustees residing there (R. 68).

4. Vague general allegations of enormous property

owned by the Church through corporations, trusts, etc., does not give to members of the Church who are not officers or directors of the corporations or trustees of the funds, or beneficiaries, the right to sue concerning those properties. A suit concerning such corporate and trust funds must be brought by persons who claim a legal or equitable interest therein.

5. The value of property or essential rights therein cannot be considered for the purpose of jurisdiction, unless the property which thus becomes the subject matter of the suit is alleged, i.e. described so as to identify it.

6. The statement that the name of a religious society has a certain value and that its use by others will injure the respondent Bishops who no longer use the name, does not properly allege jurisdiction.

7. Allegations of an injury to the "good will" of a religious society, of unfair competition with it, and the loss of possible members and contributions do not properly allege jurisdiction.

8. The Complaint in the instant case presents no controversy that can be measured in terms of money.

9. A civil court cannot consider an ecclesiastical question, unless the consideration thereof is essential to the determination of a property right. Here no cognizable property right is alleged and, accordingly, the Complaint presents a purely ecclesiastical question.

WHEREFORE, your Petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fourth Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 4876, *Clare Purcell, et al. v. S. J. Summers, et al.*, and that said decree of said Circuit Court may be reversed by this Honorable



Court, and that your Petitioners may have such other and further relief as in the premises and to this Honorable Court may seem meet and just, and your Petitioners will ever pray; etc.

COLLINS DENNY, JR.,

C. T. GRAYDON,

*Counsel for Petitioners.*